

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7966-E
)	CSR 7967-E
Petitions for Determination of Effective)	CSR 7968-E
Competition in various Franchise Areas in)	CSR 7978-E
Pennsylvania)	

MEMORANDUM OPINION AND ORDER

Adopted: May 10, 2010

Released: May 12, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the communities listed on Attachment B and hereinafter referred to as Group B Communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise areas. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in the petitions with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to

⁶47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3. .

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4.

¹²*See* Petitions at 4-5 and Exhibit 2.

¹³*See* Petitions at 2-3.

¹⁴*Id.* at 5-6. Comcast cannot determine the largest MVPD in the following Communities: (CSR 7967-E – Asylum, North Towanda, Towanda (Borough), Towanda (Township) and Wysox) and (CSR 7968-E – Juniata and Tuscarora). Comcast states that it is immaterial in these Communities which MVPD is the largest because both the

(continued....)

determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five digit zip code basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise areas.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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DBS and the cable numbers surpass the 15 percent threshold. In cases where both DBS and cable penetration exceed 15 percent of the occupied households, the Commission has recognized that the second prong of the competing provider test is satisfied.

¹⁵Petitions at 5-6. *See, e.g.,* Comcast of Dallas, L.P., 20 FCC Rcd 17968, 17969-70 (2005) (approving of a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

¹⁶Petitions at 6-8.

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7966-E, CSR 7967-E, CSR 7968-E and CSR 7978-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7966-E

Communities	CUIDS
Green Lane	PA2272
Milford	PA0881
Perkasie	PA1382
Quakertown	PA0879
Richland	PA1563
Richlandtown	PA0880
Trumbauersville	PA2124

CSR 7967-E

Asylum	PA2375
Monroe	PA0158
North Towanda Township	PA0159
Towanda Borough	PA0171
Towanda Township	PA0170
Wysox	PA0178

CSR 7968-E

Buffalo	PA3298
Centre	PA3299
Howe	PA2488
Juniata	PA3124
Liverpool	PA3336
Newport	PA0233
Oliver	PA1561
Tuscarora	PA3213

CSR 7978-E

Amity	PA2581
Bally	PA0211
Bechtelsville	PA0212
Boyertown	PA0214
Colebrookdale	PA1493
Douglass (Montgomery County)	PA2120
Douglass (Berks County)	PA1495
Earl	PA2486
East Greenville	PA1294
Hereford	PA1564
New Hanover	PA2119
Norristown	PA0806
Oley	PA2580
Pennsburg	PA2291
Red Hill	PA2270
Trappe	PA2156
Upper Frederick	PA2582
Upper Hanover	PA1562
Washington	PA1505

ATTACHMENT B

CSR 7966-E, CSR 7967-E, CSR 7968-E and CSR 7978-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7966-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Green Lane	PA2272	16.02%	231	37
Milford	PA0881	20.18%	3,073	620
Perkasie	PA1382	15.42%	3,294	508
Quakertown	PA0879	19.99%	3,421	684
Richland	PA1563	19.82%	3,763	746
Richlandtown	PA0880	17.67%	430	76
Trumbauersville	PA2124	19.79%	374	74

CSR 7967-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Asylum	PA2375	65.23%	417	272
Monroe	PA0158	43.96%	207	91
North Towanda Township	PA0159	65.17%	402	262
Towanda Borough	PA0171	65.28%	1,279	835
Towanda Township	PA0170	65.28%	432	282
Wysox	PA0178	38.31%	710	272

CSR 7968-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Howe	PA2488	45.27%	201	91

Juniata	PA3124	40.20%	495	199
Newport	PA0233	39.94%	666	266
Oliver	PA1561	38.47%	811	312
Tuscarora	PA3213	39.86%	419	167

CSR 7978-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Bally	PA0211	17.92%	413	74
Bechtelsville	PA0212	20.98%	348	73
Boyertown	PA0214	21.83%	1,805	394
Colebrookdale	PA1493	21.56%	1,994	430
Douglass (Berks County)	PA1495	21.33%	1,200	256
Douglass (Montgomery)	PA2120	37.43%	3,211	1,202
East Greenville	PA1294	20.46%	1,124	230
New Hanover	PA2119	18.52%	2,532	469
Norristown	PA0806	18.31%	12,028	2,202
Oley	PA2580	33.86%	1,382	468
Pennsburg	PA2291	24.58%	1,009	248
Red Hill	PA2270	16.91%	899	152
Trappe	PA2156	16.95%	1,292	219
Upper Frederick	PA2582	19.62%	1,045	205
Upper Hanover	PA1562	22.97%	1,737	399
Washington	PA1505	26.81%	1,212	325

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 7967-E, CSR 7968-E and CSR 7978-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

CSR 7967-E

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Asylum	PA2375	417	94	22.54%
North Towanda Township	PA0159	402	92	22.88%

CSR 7968-E

Buffalo	PA3298	420	42	10.00%
Centre	PA3299	843	64	7.59%
Juaniata	PA3124	495	85	17.17%
Liverpool	PA3336	356	14	3.93%

CSR7978-E

Amity	PA2581	3,219	110	0.34%
Earl	PA2486	1,156	161	13.93%
Hereford	PA1564	1,188	148	12.46%